

1 capitalization, correct?

2 A I --

3 JUDGE SIPPEL: Say that again.

4 Slower.

5 MR. KIM: Sure.

6 BY MR. KIM:

7 Q Even in today's market, Comcast
8 market capitalization is north of \$40 billion.
9 Isn't that right?

10 A It's not something I've analyzed.
11 So I can't confirm or deny whether that's
12 true.

13 Q Is it true that Comcast had
14 revenues of more than \$35 billion last year?

15 A It's been a while since I examined
16 their overall revenues. So I can't confirm or
17 deny that precise number.

18 Q Sounds like a precise ball park?

19 A They're a large company. I
20 couldn't tell you whether that's a precise
21 ball park. But if you want to put that
22 forward, I'm not going to disagree with it.

1 Q Okay. And you've studied MASN's
2 revenues in this case, correct?

3 A Yes, I have.

4 Q And MASN's revenues can be counted
5 in the millions, not in the tens of billions,
6 correct?

7 A I believe on an annual basis their
8 revenue for 2008 was something on the order of
9 or expected to be something on the order of
10 the magnitude of [REDACTED].

11 Q Comcast has two major arms,
12 distribution and programming, right?

13 A They may have other arms. Those
14 are the two that are relevant here.

15 Q Okay, and those are two that
16 you're aware of, true?

17 A Yes.

18 Q And you've studied those arms in
19 connection with your opinion in this case,
20 right?

21 A I have studied their behavior,
22 yes.

1 Q And isn't it true that the
2 distribution component of Comcast is about 95
3 percent of its business?

4 A I have seen that number used, yes.

5 Q And programming component is about
6 five percent, right?

7 A I believe that to be the case,
8 yes.

9 Q And the programming component
10 includes the ten RSNs that Comcast owns.

11 A I believe that to be the case,
12 yes.

13 Q And it also includes about ten
14 other national networks, true?

15 A I don't know if for sure it's ten,
16 but I'm not going to disagree with you. I know
17 they have a number of national programming
18 like the Golf Channel and Versus, etc.

19 Q Okay, and G4, correct?

20 A The G4 is one that I know they
21 have an interest in.

22 Q E!?

1 A I believe that is the case. I do
2 not know that for sure.

3 Q TV One?

4 A That sounds about right.

5 Q Okay. So with respect to just the
6 [REDACTED] of Comcast that's programming,
7 that includes about 20 networks, correct?

8 A Again, I've gone through and
9 counted it precisely, but I'm not going to
10 disagree with you with regard to that number.

11 Q Okay, and you're aware, aren't
12 you, sir, that [REDACTED]

13 [REDACTED]?

14 A I've seen that they want to grow
15 it. [REDACTED]

16 [REDACTED].

17 Q Well, you were a witness in the
18 NFL case, true?

19 A Yes, I was.

20 Q And you sat here and you saw Steve
21 Burke testify, right?

22 A I did not see Steve Burke testify.

1 He testified after me. So I did not see it.

2 Q Were you aware of his testimony

3 that he wanted to grow that arm to about [REDACTED]

4 [REDACTED]?

5 A Sitting here today, I'm not. No.

6 Q Is that consistent with the

7 analysis you've conducted in this case to know

8 that that's a fact?

9 A I know that -- I don't think that
10 it's relevant because I know they would like
11 to grow their programming arm. But I don't
12 think that it's relevant.

13 Q Sir, I'm asking a different
14 question. I'm not asking whether it's
15 relevant. We can discuss and argue among the
16 lawyers whether it's relevant. I'm asking a
17 different question. Do you know that fact?

18 A I do not know that fact.

19 Q Okay. So that's not a fact that
20 you considered in assessing Comcast's
21 motivations in this case.

22 A No.

1 Q Now isn't it true [REDACTED]

2 [REDACTED]

3 [REDACTED]?

4 A I think it's fair [REDACTED]

5 [REDACTED]

6 [REDACTED].

7 Q Isn't it true [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 A Again, I'm not in their daily

11 business strategy meetings. I have seen

12 evidence that suggests that [REDACTED]

13 [REDACTED]

14 [REDACTED].

15 Q Sir, if you could answer my

16 question, I would appreciate it. I understand

17 what you're thinking about their incentives,

18 but that wasn't my question. Isn't it true

19 that you have seen documents showing that

20 [REDACTED] [REDACTED]

21 [REDACTED]

22 [REDACTED].

1 A It's just, you know, I'm
2 struggling with the words [REDACTED]
3 from an economic perspective. I'm not going
4 to disagree with that. [REDACTED]
5 [REDACTED].

6 Q Do you know what [REDACTED]
7 [REDACTED] means?

8 A Yes. The question is where it
9 ranks in the --

10 Q No. Sir, do you know what
11 [REDACTED] means?

12 A Yes.

13 Q It's a word, a term, that you
14 understand, correct?

15 A Yes, it is.

16 Q Okay. Does Comcast, yes or no,
17 have an [REDACTED]
18 [REDACTED]?

19 A Again, I do not have access to all
20 their business documents.

21 Q So you don't know.

22 A I do not -- I can't say for 100

1 percent certainty that they [REDACTED]

2 [REDACTED]

3 [REDACTED].

4 Q So you're saying you don't know.

5 A I'm saying I can't say for sure.

6 Q So you have no idea in assessing
7 whether Comcast if discriminated what their
8 incentives would be for that discrimination.
9 Is that your testimony?

10 A No, not at all.

11 Q Okay. Would wanting [REDACTED]

12 [REDACTED]

13 [REDACTED]?

14 MR. BURKE: Objection. I'm not
15 sure if I understand the question.

16 THE WITNESS: I don't understand
17 your question either.

18 JUDGE SIPPEL: Well, you're
19 suggesting the answer. Let's try it again.

20 MR. KIM: Okay.

21 BY MR. KIM:

22 Q Does Comcast have an incentive to

1 acquire its own RSNs rather than deal with
2 independent RSNs?

3 A Yes.

4 Q Now, sir, I think you have in
5 front of you MASN Exhibit No. 70. Is that
6 right?

7 A Yes, I do.

8 Q And that is a document that you
9 attached to your expert report, correct?

10 A That is correct.

11 Q And this document is also Comcast
12 84. Is that right?

13 A Comcast 84?

14 MR. KIM: Yes. Just so the record
15 is clear I believe this is a document that was
16 identically submitted by Comcast as Exhibit
17 No. 84. Do you know that?

18 A I don't know. I'm sorry. I'm not
19 aware of all the exhibits.

20 MR. KIM: Can we get that
21 stipulation?

22 MR. BURKE: Yes.

1 BY MR. KIM:

2 Q So this is a document that Comcast
3 deemed important enough to put in as its own
4 exhibit, true?

5 A Yes.

6 Q And this document shows all
7 Comcast systems within the combined footprints
8 of MASN, CSN MA and CSN Philly. Is that
9 right?

10 A I believe that to be the case,
11 yes.

12 Q So this is every single system
13 that any one of those three RSNs could claim,
14 correct?

15 A I believe that to be the case,
16 yes.

17 Q And isn't it true, sir, that
18 Attachment 4 which is MASN Exhibit No. 70 and
19 Comcast Exhibit No. 84 shows that virtually
20 every single subscriber receives a Comcast
21 Sports Net product?

22 A That -- I believe there are a few

1 systems in here that report zero and I'm not
2 sure precisely why.

3 Q Okay. We'll get there. And there
4 are in fact exactly four systems that show
5 zeros across the board for all three networks,
6 correct?

7 A That is correct. I remember a
8 few. I don't know if it's precisely four,
9 three or five, something on that order of
10 magnitude.

11 Q Well, let's be precise because
12 we're on trial here. Let's go down on page
13 two of MASN Exhibit No. 70 and I believe there
14 is one there called Ocean County BRICK MDU.
15 Is that right?

16 A You read that correctly, yes.

17 Q So that's one. And then let's
18 turn to page three and I believe there is one
19 called Lewistown, Pennsylvania, correct?

20 A That is correct.

21 Q So that's two, right?

22 A That is two.

1 Q Now let's turn to page four and we
2 have there a Madison, Virginia with zero
3 across the board, correct?

4 A That is correct.

5 Q And Sequoia, Virginia with zeros
6 across the board, correct?

7 A That is correct.

8 Q So those would be three and four.

9 A That would appear to be those
10 four, yes.

11 Q And there are no more on page
12 five. Is that right?

13 A No, there is none on page five
14 because I'm on page five.

15 Q So if we could recap, there are
16 only four systems with zeros across the board,
17 correct?

18 A That is correct.

19 Q And for those four systems, you
20 asked Comcast whether they could explain why
21 those zeros existed, true?

22 A I did ask.

1 Q And Comcast told you that they
2 weren't sure.

3 A Well, I think the answer that I
4 gave in my deposition was that for certain of
5 them they had rolled them into other areas and
6 for others they weren't 100 percent sure.

7 Q So they weren't actually sure
8 whether there were really people out there
9 that had zeros across the board, correct?

10 A That is correct.

11 Q So the actual percentage is either
12 100 percent or very close to 100 percent,
13 correct?

14 A What percentage? I'm sorry.

15 Q Good question. The actual
16 percentage of people who could receive CSN MA
17 or CSN Philly, that percentage is actually 100
18 percent or extremely close to 100 percent,
19 correct?

20 A One or the other, yes.

21 Q Or both.

22 A Or both. There are certain areas

1 that have both.

2 Q But that's not true for MASN, is
3 it, sir?

4 A No, because a lot of the areas
5 that we're talking about here are a part of
6 the Comcast Sports Net Philadelphia footprint
7 in, say, in New Jersey where MASN doesn't have
8 the rights to offer the Orioles and the
9 Nationals.

10 Q Fair enough. That's a very good
11 clarification. That's actually from MASN's
12 own geographic footprint. Is that right, sir?

13 A Correct.

14 Q And that number isn't anywhere
15 close to 100 percent, is it?

16 A I believe the precise number is [REDACTED]
17 [REDACTED] of subscribers.

18 Q Okay, and that equates to [REDACTED]
19 subscribers, true?

20 A That is correct.

21 Q And that [REDACTED]
22 [REDACTED], correct?

1 Well, let's look if you seem to think --

2 A Yes. I just wanted to look
3 because remember you defined the city system
4 and the city system won't be the same as a
5 city.

6 Q Well, let's take a look. On page
7 two of MASN Exhibit No. 70, do you see about

8 [REDACTED]?

9 A Yes.

10 Q And that's [REDACTED] roughly, right?

11 A Right, and the one below has
12 Baltimore County. So I don't know what we're
13 defining as cities because whether Baltimore
14 ATTRB is the city or if Baltimore County also
15 includes part of the city. I don't know
16 sitting here today.

17 Q That's a fair point. So Baltimore
18 County, Maryland also has a number next to it,
19 correct?

20 A Yes.

21 Q And that number is about [REDACTED],
22 right?

1 A That is correct.

2 Q So the number that Comcast doesn't
3 get [REDACTED]

4 [REDACTED]?

5 A Right. But I don't know if there
6 are other systems that are within Baltimore
7 that should be included in that number.

8 Q Another good point. You relied
9 upon this document in forming your opinion in
10 this case, correct?

11 A Yes, I did.

12 Q And that's both the expert report
13 that you prepared and your testimony today,
14 correct?

15 A That is correct.

16 Q And you take your opinions very
17 seriously, don't you, sir?

18 A Of course, I do.

19 Q You make it under oath.

20 A Of course.

21 Q And it's your reputation on the
22 line.

1 A Of course.

2 Q And you want to do an A plus job,
3 right?

4 A I try to, yes.

5 Q You've probably never gotten a C
6 in your life. Is that right?

7 A I don't think I have actually.

8 Q You clearly don't want to do it
9 for the first time here, correct?

10 A No, I hope not.

11 Q Okay. And did you put the
12 schedule of systems together yourself, did
13 you?

14 A No, I did not.

15 Q You didn't try to use public
16 source materials to get this together.

17 A No, I did not.

18 Q You asked Comcast to put it
19 together, right?

20 A Yes, I did.

21 Q And when you got it, you didn't
22 try to check against public source materials

1 to see if they gave you accurate information,
2 did you?

3 A No, I had no reason to think that
4 what they provided me was incorrect because I
5 asked for a complete listing of systems and I
6 believe that they provided them to me.

7 Q Right. You trusted Comcast to
8 make sure it was accurate, right?

9 A I believe that they provided me
10 accurate data, yes, and I trusted them to do
11 so.

12 Q And in fact I asked you that
13 question during your deposition, right?

14 A Yes, you did.

15 Q And you said I hope so, correct?

16 A The same thing I just said.

17 Q Exactly. Now did you ask Comcast
18 specifically whether they eliminated any
19 system from this list before they gave it to
20 you?

21 A Well, I asked if it was complete
22 and I assumed it to be complete and I believe

1 I got either myself or one of my staff
2 received an affirmative answer that it was
3 complete.

4 Q And so you've said that you hoped
5 that they gave you what you asked for, right?

6 A Yes.

7 Q And that remains your testimony
8 today, true?

9 A Yes.

10 Q Let's turn to talk about
11 discrimination for a second because you do
12 offer an opinion on discrimination. Do you
13 not, sir?

14 A Yes, I do.

15 Q It is your testimony that MASN has
16 provided insufficient evidence to prove its
17 claim of discrimination. Is it not?

18 A That is correct.

19 Q And discrimination means treating
20 things differently, correct?

21 A I think discrimination I'd say
22 here is treating things differently because of

1 your affiliated programming.

2 Q Okay. But I didn't ask about the
3 affiliation part. I just asked about the
4 discrimination part. Okay. So let me try to
5 ask the question again and get a nice clean
6 record. Discrimination means treating things
7 differently, correct?

8 A Discrimination has legal context.
9 So I don't know. From an economic
10 perspective, it's not as clean as that. One
11 would want to sort of relate it with respect
12 to something.

13 Q You offer an opinion on
14 discrimination in this case, right?

15 A Yes, I do.

16 Q Okay, and it's in your report,
17 right?

18 A Yes, I do.

19 Q It's part of your testimony,
20 correct?

21 A Yes, I do.

22 Q And it's what you said here this

1 morning, right?

2 A Yes.

3 Q Okay, and now you're telling me
4 you're not sure what discrimination means in
5 a legal context.

6 A No.

7 Q I didn't think that's what you
8 said. So let me go over it again. Does
9 discrimination mean treating things
10 differently?

11 A You have to have something with
12 respect to it. Is it different based on
13 affiliation, yes. Discrimination based on
14 affiliation is treating something differently
15 based on affiliation.

16 Q Sir. Mr. Orszag, if you could
17 just answer my question, I would appreciate it
18 because we can get into all different types of
19 discrimination based on race, on sex, on
20 gender, down the road. I'm asking you a very
21 simple question about the word
22 "discrimination" itself. You've heard that

1 word before, correct?

2 A Of course.

3 Q You know what that means, right?

4 A Yes, but it's with respect to
5 something.

6 Q Okay. But does the word itself
7 have significance to you?

8 A Yes. It means -- I'm using it in
9 the way an economist would use it.

10 Q I'm asking you -- Okay. I'm
11 asking you a very simple question.

12 A Okay.

13 Q Does the word itself have
14 significance to you?

15 A Yes.

16 Q You know what the word
17 "discrimination" means, correct?

18 A Yes.

19 Q Okay. Does not the word
20 "discrimination" leaving aside for a second
21 what the discrimination could be based on mean
22 treating things differently?

1 A I will accept it for the purposes
2 here, but from an economic perspective one
3 would have to say with respect to something.

4 Q Do you agree that Comcast applies
5 a different standard to its RSNs than it does
6 to independent RSNs like MASN?

7 A Different standard, I don't know
8 if I agree with that. The cost of carriage
9 are different.

10 Q Let me see if I can get a straight
11 answer from you, okay, because we can go onto
12 all the details down the road. Would you
13 agree with me that Comcast applies a different
14 standard for its RSNs than it does to
15 independent RSNs like MASN?

16 A I don't believe that they do once
17 one factors in cost.

18 Q Would you agree with me that
19 Comcast applies a different standard to its
20 RSNs than it does to independent RSNs like
21 MASN? Yes or no?

22 A The answer would be no. They do

1 not.

2 Q Did you know in assessing your
3 opinion of discrimination that the president
4 of Comcast, Steve Burke, testified when he was
5 sitting exactly where you are today that
6 affiliated networks get treated "like siblings
7 as opposed to like strangers"?

8 MR. SOLOMON: Your Honor, I'd like
9 to object just from the perspective that when
10 this question came up in the WealthTV
11 proceeding you sustained an objection to that
12 question as being beyond the scope of his
13 direct.

14 MR. KIM: Your Honor, it cannot
15 possibly be beyond the scope of this witness'
16 direct because he's offering an opinion on
17 discrimination. I don't know what witness was
18 asked that question before, but if he's
19 offering an opinion on discrimination I can
20 probe his efficiency and the basis of that
21 opinion.

22 JUDGE SIPPEL: And what is the

1 testimony that you're relying on?

2 MR. KIM: The testimony, Your
3 Honor, is what Steve Burke, the president of
4 Comcast, said during the NFL case. Those are
5 his words.

6 JUDGE SIPPEL: Which is different
7 than the WealthTV case.

8 MR. KIM: And, Your Honor,
9 secondly usually the procedure is there's one
10 witness who objects on behalf of the -- the
11 one lawyer who objects on the behalf of the
12 one witness. So obviously it's the Court's
13 rules that govern. But that's certainly been
14 my practice.

15 MR. BURKE: I wouldn't want Mr.
16 Kim to feel like we're ganging up on him or
17 anything.

18 JUDGE SIPPEL: No.

19 MR. KIM: I have a very soft ego,
20 Your Honor.

21 MR. BURKE: Mr. Solomon was
22 presented in WealthTV, Your Honor.